

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**STEVEN P. TAYLOR**  
Claimant

VS.

**FEDERAL EXPRESS CORPORATION**  
Respondent  
Self-Insured

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Docket No. 210,676

**ORDER**

The respondent requested review of the Order entered by Special Administrative Law Judge Michael Harris dated July 23, 1996.

**ISSUES**

The Special Administrative Law Judge ordered authorized medical treatment and temporary total disability benefits. Respondent requested this review and set forth the following issues in its Application for Review:

- (1) Whether the Special Administrative Law Judge had jurisdiction to conduct the hearing of July 23, 1996.
- (2) Whether the Special Administrative Law Judge had jurisdiction to admit into evidence the medical report of George Lucas, M.D.
- (3) Whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds:

(1), (2) The Special Administrative Law Judge had the jurisdiction and authority to conduct the July 23, 1996, hearing. The Appeals Board finds that the July hearing was a

continuation of the preliminary hearing held earlier on April 26, 1996. Therefore, claimant was not required to file a second Application for Preliminary Hearing or serve upon respondent written notice of intent to file such application. The Special Administrative Law Judge correctly ruled that the purpose of the July hearing was to reconsider the issues raised at the April hearing in light of new evidence.

Because of the above finding that the July hearing was a continuation of the preliminary hearing process, the Appeals Board finds that the Special Administrative Law Judge properly admitted and considered the medical report of George Lucas, M.D.

(3) The Appeals Board agrees with the Special Administrative Law Judge that claimant has proven that it is more probably true than not true that claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent. This finding is based upon Dr. Lucas' opinion regarding causation and claimant's description of his work. In a letter dated July 8, 1996, Dr. Lucas wrote:

"It is my belief that Mr. Taylor's condition of disruption of function of the long thoracic nerve is related to his work and specifically repetitive overhead lifting with pushing and pulling of heavy shuttle containers."

In addition, the Appeals Board notes that although orthopedic surgeon Harry A. Morris, M.D., does not believe claimant's condition is related to work, he did acknowledge that trauma and overuse injuries can injure the long thoracic nerve and that claimant's severe scoliosis would have predisposed him to such injury. Also, the Appeals Board notes that the Administrative Law Judge who observed claimant initially testify at the April hearing found him "a credible witness."

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Special Administrative Law Judge Michael Harris dated July 23, 1996, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1996.

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BOARD MEMBER

c: William L. Townsley, III, Wichita, KS  
Gary A. Winfrey, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director